WONG SZE SOON

v.

PEGAWAI PEMEGANG HARTA MALAYSIA & ANOR.

HIGH COURT MALAYA, SHAH ALAM
DATO' JAMES FOONG J
[ORIGINATING SUMMONS NO. 21-99-94]
17 JULY 1995

LAND LAW: *Plaintiff purchased land through public auction - Land subject to two caveats - Plaintiff applying to set aside caveats - Second defendant objecting to application - Plaintiff not having paid purchase price in full - Whether plaintiff was an "aggrieved party" within the meaning of s. 327(1) of the National Land Code 1965 - Whether plaintiff has locus standi to make the application.*

The plaintiff is the successful bidder in a public auction conducted by the Land Administrator pursuant to foreclosure proceedings instituted by the chargee of a piece of land (the said land). The plaintiff applied to set aside two caveats lodged against the said land, the first of which was a Registrar's Caveat placed on the said land at the request of the first defendant on the ground that the registered owner is an adjudicated bankrupt.

The second caveat is a private caveat, lodged by the second defendant on the grounds that the registered owner had entered into a sale and purchase agreement with the second defendant for the sale of the said land to the second defendant.

The second defendant objected to the plaintiff's application to set aside the caveats on the ground that the plaintiff could not be considered an "aggrieved party" as he had not paid the full balance of the purchase price to the Land Administrator within the time stipulated in the terms and conditions of the public auction. In the circumstances, the second defendant contended that the plaintiff had no *locus standi* to make the application.

Held:

[1] It was clear from Lord Diplock's speech in *Eng Mee Yong & Ors. v. V. Letchumanan* that when a caveatee is not the registered owner of the land, as in the present case, it is for him to begin with proof to the satisfaction of the Court that he is an "aggrieved person" as required by s. 327(1) of the National Land Code. This he must do by tendering sufficient evidence to justify that he has an interest that can be sustained, by the law and in fact, over the land. The caveator need not begin to prove his case until this condition is fulfilled by the caveatee.

[2] The plaintiff had failed to pay the balance of the purchase price on or before the date as extended by the Land Administrator. Without such payment, the contract secured by the plaintiff under the public auction lapsed, and thus became null and void with the 10% paid earlier liable to be forfeited.

[3] With the purchase of the said land terminated, the plaintiff no longer had any legal claim over the same, and as such, he did not qualify to be an "aggrieved person" within the meaning of s. 327(1) of the National Land Code. Without such qualification he has no *locus standi* in these proceedings and the plaintiff's application must necessarily be dismissed without even the necessity to proceed to consider the merits of whether the caveats should be removed.

[Plaintiff's application dismissed with costs].

Cases referred to:
Malayan United Finance Bhd. v. Tay Lay Soon [1991] 1 MLJ 504 ***(cit)***
Eng Mee Yong & Ors v. V. Letchumanan [1979] 2 MLJ 212 ***(foll)***
Ismaga Bina Sdn. Bhd. v. Govindasamy [1994] 1 MLJ 221 ***(refd)***
M & J Frozen Food Sdn. Bhd. & Anor. v. Siland Sdn. Bhd. & Anor. [1994] 1 MLJ 294 ***(foll)***

Legislation referred to:
National Land Code, s. 327(1)

Other source referred to:
Removal of Private Caveats By the Court, Teo Keang Sood, [1994] 3 MLJ lxxxv

For the plaintiff - Blanche Oleary; M/s. Blanche Kayveas & Co.
For the first defendant - Nadeson; Official Assignee
For the second defendant - Rajesawary J. Muniandy; M/s. M. Rajes & Assoc.

JUDGMENT

James Foong J:

The plaintiff in this case is applying to set aside two caveats lodged against a piece of property held under HS(M) 4839 for Lot 11337 Mukim of Empang, Daerah Ulu Langat, Selangor (hereinafter referred to as the said land). The first caveat is a Registrar's Caveat placed on the said land at the request of the 1st defendants on the ground that the registered owner of the said land (registered owner) is an adjudicated bankrupt. The second caveat placed by the 2nd defendant is a private caveat based on the reason that the registered owner has entered into a sale and purchase agreement with the 2nd defendant for the sale of the said land to the 2nd defendant.

The plaintiff on the other hand is a successful bidder in a public auction conducted by the Land Administrator pursuant to foreclosure proceedings instituted by the chargee of the said land - Standard Chartered Bank Malaysia Bhd. (the bank). The plaintiff has paid a sum equivalent to 10% of the purchase price on 27 September 1994 to the Land Administrator with the balance of 90% to be paid within 3 months from that date. In order to finance this purchase, the plaintiff was able to secure a loan from a financial institution, but this loan cannot be disbursed unless the said land can be transferred and registered in the name of the plaintiff and thereafter charged to the financial institution. This obviously cannot be achieved in view of the presence of the 2 caveats on the said land. Henceforth, the plaintiff applies to remove them.

The 1st defendants raised token objection but are more interested in any balance money remaining over after payment to the bank for their necessary action. The Official Assignee (1st defendants) informed this Court that since the registered owner was declared a bankrupt he has not made any attempts to communicate with the Official Assignees' office despite the fact that it is mandatory to do so.

The 2nd defendant however has filed an affidavit objecting to this plaintiff's application. He explained that he is a beneficial owner of the said property under a written sale and purchase agreement he entered with the registered owner on 22 August 1984, and under the terms of this agreement he is allowed to pay the balance of the purchase price by instalment which was duly performed with him paying directly to the bank for and on behalf of the registered owner. According to him, this instalment payment was stopped when the registered owner was adjudicated a bankrupt. He has written to the Official Assignee but received no reply, and at the present moment he is awaiting further development. He contended that being a beneficial owner he has a caveatable interest over

the said land, and based on the fact that he has made significant payments towards the purchase price his claim does raise serious questions to be tried, and on the balance of convenience his private caveat ought to remain.

One other interesting contention of the 2nd defendant is the allegation of the plaintiff having no *locus standi* in this application since, he cannot be considered as an "aggrieved party" for reason that the plaintiff himself has also not paid the full balance of the purchase price to the Land Administrator within the time stipulated in the terms and conditions of the public auction.

The plaintiff however argued that he has obtained an extension of time to pay the balance of the purchase price from the Land Administrator. To this, he annexed to his affidavit in reply a letter dated 14 December 1994 addressed to him by the Land Administrator, Ulu Langat District (the authority who conduct the sale by public auction), granting him an extension of 3 months to pay the balance of the purchase price.

The plaintiff then proceeded to highlight to this Court that up to date of the hearing of this application the 2nd defendant has not filed any application to the honourable Court to establish his right by way of specific performance or otherwise. This period of delay must be considered from the time when the registered owner was made a bankrupt (17 November 1986), for it was during this period the 2nd defendant maintained that he stopped making instalment payments towards the purchase price. It was contended that an examination of the sale and purchase agreement between the 2nd defendant and the registered owner revealed firstly, no specific date was fixed for completion of this sale and secondly, the 2nd defendant was supposed to have continued to pay the balance of the purchase price by way of similar instalment amount towards the repayment sum required of the bank on the registered owner. Since such payment was discontinued the sale and purchase between the 2nd defendant and the registered owner would have terminated, and the 2nd defendant's rights and interest to the said land ceased particularly when the said land was subsequently auctioned. The case of *Malayan United Finance Bhd. v. Tay Lay Soon* [1991] 1 MLJ 504 was cited in support of this proposition.

It is often a common process in an application for the setting aside of caveat to require the caveator to prove initially, that he has a caveatable interest over the land in question, followed by the satisfaction of a serious question to be tried, and that on the balance of convenience the private caveat ought to remain. This must be the correct approach if one is to concentrate only on a portion of the judgment of Lord Diplock in the classic case of *Eng Mee Yong & Ors v. V. Letchumanan* [1979] 2 MLJ 212 where it states as follows; at page 215B:

> This is the nature of the onus that lies upon the caveator in an application by the caveatee under s. 327 for removal of a caveat: he must first satisfy the Court that on the evidence presented to it his claim to an interest in the property does raise a serious question to be tried; and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the *status quo* until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

However, this onus of proof placed upon the caveator to begin should only apply in cases where the "caveatee", (a person affected by the caveat) is the registered owner of 'the land. If he is otherwise, then, Lord Diplock in *Eng Mee Yong's* case has this to reveal (at page 215C);

> In their Lordships' view a distinction must be drawn between cases where the applicant is the registered proprietor of the land (i.e. the caveatee) and cases where the applicant is some other person who claims a right to an interest in it. In the former case the caveatee can rely upon his registered title as *prima facie* evidence of his unfettered right to deal with the land as he pleases; it is for the caveator to satisfy the Court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so. So where, as in the instant case, the only parties to an application under s. 327 are caveatee and caveator there is no difference between what a caveator must establish to obtain an extension of the caveat under s. 326 and what he must establish to defeat the caveatee's application for removal of the caveat under s. 327.
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> It is otherwise when the applicant under s. 327 is someone other than the caveatee. He has no registered title to rely upon as *prima facie* evidence of his interest in the land. It is for him to begin by satisfying the Court that there are sufficient grounds in fact and law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat.

Therefore when a caveatee is not the registered owner, it is for him to begin with proof to the satisfaction of the Court that he is an "aggrieved person" as required by s. 327(1) of the National Land Code. This, he must do so by tendering sufficient evidence to justify that he has an interest that can be sustained by the law and fact over the land. The caveator need not begin to prove his case until this condition is fulfilled by the caveatee. This approach seems to have been adopted in the following cases;

> *United Malayan Banking Corp. Bhd. v. Development Commercial Bank Ltd. Bhd.* [1983] 1 MLJ 165 where the caveatees were the registered chargees, *Ismaga Bina Sdn. Bhd. v. Govindasamy* [1994] 1 MLJ 221 where the caveatee was a registered lessee and *Punca Klasik Sdn. Bhd. v. Abdul Aziz bin Abdul Hamid & Ors.* [1994] 1 MLJ 136 where the caveatees were successful bidders who completed payment of the full purchase price at an auction; all of whom were at the material time not registered proprietors of the land.

Learned Counsel for the 2nd defendant: chose to rely on the phrase "no *locus standi*" to describe the position of the applicant in this case. Selventhiranathan JC (as he then was) in *Ismaga Bina Sdn. Bhd.* also adopted this cliche when he elaborated;

> ... before (the applicant could proceed to (prove that the respondent was not within the category of persons or bodies specified in s. 323(1) of the Code), the applicant had to show that it had the necessary *locus standi* to make the application for the removal of the caveat by virtue of being a person or body aggrieved by the existence of the caveat.

In the opinion of this Court, this indeed is an appropriate term. Section 327(1) of the National Land Code imposes a condition that only an " aggrieved person" can apply for the removal of a caveat under this provision and non-fulfilment of this condition deprives the applicant of any standing before the Court in such an application.

The principles to determine who an "aggrieved person" is, has already been expounded in the judgment of Lord Diplock in *Eng Mee Yong* and if the applicant fails to satisfy such established principles he has no *locus standi* before the Court.

In this present case, the plaintiff was a successful bidder in a public auction which was conducted under terms and conditions as advertised for the auction. One such condition was that the balance of the purchase price must be paid within 90 days from date of sale, and failure to do so would make the 10% deposit so paid by the plaintiff to the Land Administrator liable to be forfeited. From evidence tendered, the 90 days expired on 22 September 1994 and it is not denied by the plaintiff that this balance of the purchase price was not paid. However, he submitted that he was granted an extension of

3 months to pay the balance of the purchase price by the Land Administrator. To this, the 2nd defendant's Counsel put forth two arguments. The first is that the Land Administrator has no authority to grant any extension of time to any successful bidder to pay the balance of the purchase price after the sale is completed by public auction. The second is that even if the Land Administrator can grant such an extension of time, such extended time has lapsed with the plaintiff making no such payment of the balance of the purchase price till date.

In respect of the first contention raised by the 2nd defendant, this Court finds no merits therein in the light of the Supreme Court's decision in *M & J Frozen Food Sdn. Bhd. & Anor. v. Siland Sdn. Bhd. & Anor.* [1994] 1 MLJ 294, where it conferred upon the High Court a right to vary the terms and conditions of a sale completed by public auction, "if having regard to the interest of both the chargor and the chargee, it is fair to do so," (refer to the judgment of Dato' Wira Wan Yahya SCJ at page 309). *M & J Frozen Food's* case was decided based on judicial sale in consequence to foreclosure proceedings brought by the chargor, and as the result of which the High Court carried out a sale by public auction. In the present case before this Court, the Land Administrator not unsimilar to the High Court in *M & J Frozen Food's* case also performed similar functions in carrying out a judicial sale by public auction as provided for by the National Land Code. When the functions of the Land Administrator are similar to that of the High Court in such matters, this Court is of the opinion that the Land Administrator has the same right to those of the High Court to vary the terms and conditions of the sale completed by public auction, of course provided always, that there is regard for the interest of the chargor and chargee, and that it is fair to do so. In this case, the Land Administrator has granted an extension of time to pay the balance of the purchase price, which is a variation from the terms and conditions of sale. As he has the legal right to do so, and in the absence of any evidence that he has not regarded the interest of both the chargor and chargee of the said land and that it was unfair of him to do so, this Court finds that the extension of time to pay the balance of the purchase price so granted by him is legal and valid.

As regards to the second contention of the 2nd defendant, this calls for a careful perusal of the letter of extension issued by the Land Administrator. This letter is dated 14 December 1994. The date for payment of the balance of the purchase price under the original terms and conditions of the auction sale was 22 September 1994. With this letter from the Land Administrator, the period for payment would have been extended to 22 December 1994. Regrettably no payment was made on or before this date by the plaintiff. Any proposition that the extended date should commence from the date of the Land Administrator's letter is totally unacceptable for any extension of time must always commence from the original stipulated period (unless stated otherwise). Without such payment, the contract secured by the plaintiff under the public auction lapsed, and thus became null and void with the 10% paid earlier liable to be forfeited. This must be so, for it is a term and condition expressly stated in the condition of sale published and accepted by the plaintiff before the public auction was concluded. There is no stipulation in the conditions of sale that the balance of the purchase price need only be paid upon the removal of any caveats. In fact the existence of the 2 caveats lodged by the defendants were clearly displayed in the conditions of sale and that the sale of the said land is subjected to their existence. When the plaintiff has full knowledge of such a fact and accepted the same as binding upon him, he cannot now turn back with excuses that their existence prevented him from completing the purchase. The Land Administrator under the National Land Code need not be concerned with how a successful bidder proposes to raise his finance to pay for his purchase. Such matter must surely be the sole responsibility

of the plaintiff and if his financer seeks to impose conditions before the release of any loan amount, the same cannot and should not be simultaneously forced upon the legal authority selling the said land through prior agreed terms.

With the purchase of the plaintiff for the said land terminated, the plaintiff no longer has any legal claim over the same, and as such, he cannot be qualified to be an "aggrieved party" within s. 327(1) of the National Land Code. Without such qualification he has no *locus standi* in these proceedings. Accordingly, this Court dismiss this plaintiff's application with cost without even the necessity to proceed to consider the merits of whether the caveats should be removed. As correctly pointed out by Teo Keang Sood in an article titled *"Removal of Private Caveats By the Court"* [1994] 3 MLJ lxxxv, "where such an applicant fails to so satisfy the Court, the caveat entered by the caveator will remain. In such a case, the caveator need not even have to discharge the onus which would otherwise have been placed on him."